

**HIGH COURT OF TRIPURA
AGARTALA**

Review Pet. No.4 of 2022

1. The State of Tripura to be represented by the Secretary, Department of Agriculture, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010.
2. The Director, Department of Agriculture, Government of Tripura, Krishi Bhavan, Agartala, P.O-Agartala, Pin-799001.
3. The Managing Director, Tripura Horticulture Corporation Ltd. (A Government undertaking). R.C.D.F Complex, P.O-Arundhutinagar, West Tripura, Pin-799003.
4. The Secretary, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura.

..... Petitioner(s).

Versus

Shri Bikash Roy, S/O- Sri Ashutosh Roy, resident of Golchakkar, A.K. Road, Agartala, West Tripura, Tripura, Pin-799001.

..... Respondent(s).

For Petitioner(s) : Mr. D. Bhattacharya, G.A.,
Mr. Soumyadeep Saha, Advocate.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and Judgment : 24th April, 2023.

Whether fit for reporting : NO.

JUDGMENT & ORDER(ORAL)

Heard Mr. D. Bhattacharya, learned Government Advocate,
for the petitioners and Mr. P. Roy Barman, learned senior counsel for the
respondent.

[2] The instant review petition is directed against the judgment dated 2nd December, 2021 passed in WP(C) No.617 of 2021. The operative portion of judgment reads as under:

“The grievance of the writ petitioner Sri Bikash Roy is that he had worked under the respondent No.3, i.e. the Tripura Horticulture Corporation Limited, a Government undertaking, and he retired on 31.07.2020 after rendering a service for a period of 32 years. It appears that no payment of gratuity was made in favour of the petitioner in spite of the mandate of Section 4(2) of the Payment of Gratuity Act. In response, the respondent No.3 has filed a counter affidavit in which it has cited financial hardships on the part of the Corporation as the ground for non-payment of the claims of the petitioner. In this respect, attention is drawn by the learned counsel for the petitioner to a judgment rendered by this Court in case of *Smt. Niyati Saha vrs. The State of Tripura and others* in **WP(C) No.224 of 2018** decided on 18.03.2019. It would be relevant to note herein that Smt. Niyati Saha was also an employee of the Tripura Horticulture Corporation Limited and this Court disposed of the said writ petition with the following directions:

“7. Having regard to the submission of the learned counsel as well as government notifications, mentioned here-in-above, at this stage, I am not inclined to issue any specific direction upon the respondents. However, it is directed that the respondents, specially, the Finance Department, respondent no.4, Government of Tripura, shall release all the benefits including gratuity and other pensionary benefits, which the petitioner is entitled to in view of the memorandum dated 16.08.1978 and 28.11.2012 within a period of two months from the date of receipt of this order. It is also to be noted that if the gratuity is not released within a period of thirty days from the date, the statute speaks that the employee concerned is to be paid interest. In the backdrop of the discussions and observations made here-in-above, and in the light of government circulars issued time to time, the concerned authority is to take decision within the period as fixed here-in-above.

It is also made clear that while deciding the claim of the petitioner, the respondents, specially respondent No.4, Finance Department, Government of Tripura is under obligation to take note of the decision rendered by this court on 08.08.2017 in **WP(C) 588 of 2017** (Mrs. Hena Rani Das vs. The State of Tripura and ors) as well as the decision

arrived by this court in **WP(C) 0000373 of 2015** (Gouranga Chandra Adhikari vs. The State of Tripura and ors).

8. Let the order of this writ petition along with the orders of this court passed in WP(C) 588 of 2017 and WP(C) 0000373 of 2015 be communicated to Mr. D. Sarma, learned Additional GA, who after receipt of the judgment of this writ petition will send the copy of the concerned department for taking necessary steps, as observed and directed above.

9. With the above observation and direction, the instant writ petition is disposed of. Liberty is reserved with the petitioner to approach this court, if she is aggrieved by any order of the respondents.”

Accordingly, since the case is *pari materia* with the earlier judgment rendered by this court, the writ petition is allowed in terms of the directions contained in paragraphs-7, 8 & 9 noted hereinabove.

Writ petition stands disposed of. Pending application(s), if any, also stands disposed of.

[3] The State has preferred the review petition *inter alia* on the ground that the writ petitioner/respondent herein was not a regular employee of Tripura Horticulture Corporation Limited but was appointed temporarily on *ad hoc* basis vide office order dated 1st August, 1988. Being an *ad hoc* employee he is not entitled for any retirement benefit like gratuity/leave salary etc. Therefore, the impugned judgment requires to be reviewed.

[4] On being specifically asked, learned counsel for the petitioner-State has not been able to show that the instant plea was taken before the learned Writ Court when the case was decided. The State had not filed any affidavit. The Respondent No.3, Managing Director, Tripura

Horticulture Corporation Limited had only filed a counter-affidavit before the Writ Court. The respondent No.3 in the writ petition has not taken this plea that the petitioner was an *ad hoc* employee. Rather resource crunch is the ground taken by the Corporation showing its inability to meet the expenditure towards payment of gratuity, leave encashment to its employees without any financial support from the State Government.

[5] Mr. P. Roy Barman, learned senior counsel for the writ petitioner has brought to the notice of this Court that the impugned judgment is based upon an earlier decision rendered by the Writ Court in the case of *Smt. Niyati Saha vs. The State of Tripura and others in WP(C) No. 224 of 2018*. It is submitted that the learned Writ Court had also placed reliance upon the first decision on this issue in *WP(C) No. 588 of 2017* in the case of *Mrs. Hena Rani Das vs. The State of Tripura and Others* decided on *8th August, 2017*. It is submitted that the review petition preferred by the State against the said decision in Rev. Pet. No.3 of 2022 has been dismissed on 14th March, 2022. Therefore, no case of review is made out as there are no apparent errors on the face of record in the impugned judgment. The respondents only have been directed to take a decision in view of the discussions and observations made in the light of Government circulars issued from time to time within a stipulated period. Mr. Barman, learned senior counsel for the petitioner has also submitted

that the contention that the writ petitioner was an *ad hoc* employee is not correct. He was a regular employee of the Corporation.

[6] I have considered the submissions of learned counsel for the parties, taken note of the pleadings placed from record and also gone through the writ records. I have also perused the impugned judgment. At the outset, it needs to be observed that review jurisdiction is exercised to correct the mistake of the Court and not the mistake of the parties. The instant stand taken by the petitioner-State that the writ petitioner was not a regular employee rather an *ad hoc* employee was never taken before the Writ Court. The respondent No. 3 (Managing Director, Tripura Horticulture Corporation Ltd.) in the writ petition has on the other hand taken a plea of resource crunch in meeting the expenditure towards post retirement benefits of the employees of the Corporation. Moreover, the learned Writ Court has only directed the respondent-authorities to take an appropriate decision in the light of the Government circulars and the discussions and observations made therein within a stipulated period. As such, this Court does not find any grounds of review made out to interfere in the impugned judgment. It further appears that the impugned judgment was passed on the basis of earlier directions passed by the Writ Court in WP(C) No. 588 of 2017 dated 8th August 2017 and also in WP(C) No.224 of 2018 in case of **Smt. Niyati Saha** (*supra*) decided on 18th March, 2019

which decisions have attained finality. As such, no case of review is made out.

[7] The instant petition is dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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